

SDP-8174-2019: 405 South Frederick Avenue- Applicant's Response to Questions at the Joint Public Hearing and Outside Public Correspondence

On August 5, 2019, the Mayor and City Council and Planning Commission held a joint public hearing for schematic development plan application SDP-8174-2019. The applicant is requesting to construct a 5,060 square foot Wawa retail building and six doubled sided gas filling pumps. The following comments on the proposed plan were raised at the Joint Public Hearing and from outside correspondence received from the public:

- Site Selection
- Vehicle queuing at signalized intersections and entrances;
- Pedestrian Connectivity and Points of Conflicts;
- Compatible with the other surrounding uses;
- Environmental Impacts from the gas station;
- Brightness of the site lights on the property and its impact to the adjacent neighborhood;
- Explore the possibility of aligning the sidewalk with the Holbrook Shopping Center sidewalk;
- Noise impacts on the adjacent residential community;
- Consider adaptive reuse of the existing structure;
- Examine the possibility of removing the proposed ingress/egress along South Frederick Avenue; and
- Compliance with the Master Plan
- Montgomery County Regulations on Gas Stations
- Need for another gas station on Frederick Avenue
- Are Gas Stations a permitted use in the CD Zone

In response to the comments received during the Joint Public Hearing, the Applicant has submitted a response letter and exhibits which is labeled as Exhibits #105a-j in the application packet. Below are the Applicant's responses to the aforementioned questions raised at the Joint Public Hearing Meeting.

Site Selection

As noted in the Applicant's response letter, Wawa selected this location because of its close proximity to the Holbrook Center and the signalized light at the intersection of South Frederick Avenue and Education Boulevard (Exhibit #105a). The Property functions more like a corner site than a mid-block site. The site was also selected because of the number of cars passing the Property, the number of residents and employers within a four minute drive, and proximity to public facilities such as the recreation center and park all meet Wawa's criteria for site selection. Lastly, the Property is an appropriate size to accommodate a filling station and retail building and is the typical area that Wawa usually develops. The Applicant notes that the number of gas pumps proposed to the site is less than the typical Wawa gas station.

Vehicle Queuing at signalized Intersections and entrances

During the Joint Public Hearing, comments were raised about vehicular queuing and circulation. The Applicant's traffic engineer, Wells + Associates, submitted a Transportation Memo analyzing the vehicle queuing for the project (Exhibit #105b). The memo concludes that there is sufficient queuing areas to accommodate vehicle stacking during the morning and afternoon peak hours. The memo notes that the

altering of the existing median along South Frederick Avenue will provide more space for vehicle stacking on the left turn lane going southbound and will not block the median break at Peony Drive. The memo also concluded that there is adequate space for vehicle queuing within the subject property and the Holbrook Shopping Center.

The Applicant has obtained an easement agreement with the Holbrook Shopping Center property. This agreement provides access to the signalized intersection and, according to the Applicant, adequately moves vehicle traffic in and out of the project (Exhibits #73 and 74). The use of the drive aisle and new entrance on South Frederick Avenue will provide safe circulation for vehicles.

As required, the Applicant did provide a Traffic Impact Study (TIS) as part of the SDP application (Exhibit #5a-b). According to the study, traffic counts were conducted on Wednesday, May 23, 2018, which was a non-holiday week when Montgomery County public schools were in session. Staff has received additional public comments regarding the timing of the traffic counts in relation to a modified school schedule. In response, the Applicant concluded that even in the event that the traffic counts were conducted during a modified school schedule on account of testing, it would not impact the TIS conclusion that all study intersections would continue to operate within the acceptable Critical Lane Volume standards during the AM and PM peak hours (Exhibit #105a). Staff concurs with the Applicant's response. Additionally, State Highway Administration (SHA) has reviewed the Applicant's TIS and has provided an approval letter (Exhibit #106).

The Applicant also examined the possible impacts of the project on Peony Drive. The Applicant's Transportation Memo concludes that because of the traffic that already exist on South Frederick Avenue, it is currently difficult to make a left from Peony Drive onto southbound South Frederick Avenue (Exhibit #105a). The memo notes that there is sufficient space between Peony Drive and the new entrance on the subject property to permit safe vehicular movements. There is currently a "Do Not Block Intersection" sign facing northbound of South Frederick Avenue. The memo also notes other routes with signalized intersections that can be taken within the Deer Park Neighborhood to get onto Frederick Avenue safely. The altering of the existing median along South Frederick Avenue will provide more space for vehicle stacking on the left turn lane going southbound and will not block the median break at Peony Drive.

Pedestrian Connectivity and Points of Conflicts

There were concerns from the public about the high school students crossing South Frederick Avenue to get to the subject property. The proposed plan includes pedestrian connectivity within and to the site, which is referenced in the Applicant's pedestrian circulation plan (Exhibit #105c). The plan includes a new six (6') sidewalk along South Frederick Avenue. To facilitate a safe pedestrian circulation on the property, the project will include sidewalks along on both sides to the property, which will guide pedestrians safely to the entrance of the retail building. The Applicant notes that the new pork chop island at the new entrance on South Frederick Avenue will provide ample refuge for pedestrians and avoid any conflicts with vehicles.

A key to the Applicant in selecting the proposed site was the existence of a signalized intersection. In response, the Applicant has provided an examination of the signalized crossing within the provided Transportation memo. According to the memo, there is approximately 30-31 seconds of time for

pedestrians to cross at the signalized intersection, which in the Applicant's opinion is sufficient time to cross the entire street or reach the pedestrian refuge (Exhibit #105a). Staff notes that the Applicant will need to work with State and County on the change of the traffic light timing for this project.

Compatibility with other surrounding uses

As stated in the Applicant's response letter, the proposed Wawa gas station and retail building will be compatible with the surrounding uses. The plan includes a 0.26 acre afforestation area in the rear yard which will provide a landscape buffer between the retail building and the adjacent residential community. The gas pumps will be located closer to South Frederick Avenue to avoid any adverse impact to the adjacent residential community. The Applicant has also provided an exhibit showing the distance from the gas pumps to the residential neighborhood and high school (Exhibits #105d and 105e). According to this exhibit, the closest residential home is located 239 feet from the filling pumps. The filling pumps are also 1,353 feet from the Gaithersburg High School tennis court, 1,369 feet from the football field and 1,830 feet from the baseball field. The proposed Wawa will be adjacent to an existing Holbrook Shopping Center that contains retail and office uses. There are also existing retail and gas stations on South Frederick Avenue.

Environmental Impacts from the gas station

The Applicant, in response to questions raised during the public hearing, has provided information about environmental impacts of the project. In the response letter, the Applicant identified that the Underground Storage Tanks (UST) will be double-walled and will have a containment sump beneath all piping connection with a sensor. The UST system is equipped with a Stage I Vapor Recovery System with components approved by the California Air Resources Board (CARB) for Enhanced Vapor Recovery (EVR). The sensor will continuously monitor and can detect any fuel spillage. If any underground fuel spillage is detected, then the sensor will communicate any alarm to the Tank Monitoring System, Wawa's Building Automation System (BAS) and the 24 hour Wawa Central Station. The Submersible Turbine Pump (STP) will also be equipped with a mechanical leak detector. The UST will also be equipped with a Stage I Vapor Recovery System which will prevent vapors from escaping from the tanks during deliveries and while fuels are being dispensed. The UST are inspected every six months. The Applicant also notes that all members of the Wawa store management team are trained Maryland UST operators and have been trained on how to handle a fuel spill emergency. The store will be equipped with multiple Emergency Fuel Shutoff buttons and there will be fire extinguisher at each fueling pump (Exhibit #105a). The burial and backfill of the UST's will meet all of the manufacturer and state requirements. The leak detectors, tank probes, sensors, vent lines and tank monitoring system are also installed per manufacturer and state requirements and are tested annually. The fuel delivery trucks are prohibited to have the engines idling during deliveries.

Brightness of Site Lights on the Property

A photometric plan has been included with the SDP application. According the Applicant's response letter, all of the project's light fixtures will be full cutoff and will utilize LED bulbs (Exhibit #105a). Additionally, the proposed light fixtures, except for the ones located at the right-in/right-out, will utilize backshields. As shown on the photometric plan, there will be no light spillage into the adjacent residential community.

Sidewalk Alignment with the Holbrook Shopping Center

The proposed plan will include a six (6) foot sidewalk in the front of the building and will line up with the existing sidewalk to the west of the property. The Applicant was asked to explore the possibility of aligning the sidewalk with the existing sidewalk on the Holbrook Shopping Center property. As stated in the Applicant's response letter, the proposed sidewalk cannot be moved further from the curb due to the location of numerous large utility facilities that will make it impossible to align it with the Holbrook Center sidewalk (Exhibit #105h). The other conflict with relocating the sidewalk is the new right-in/right-out entrance on South Frederick Avenue. This new entrance is needed to facilitate the traffic circulation throughout the property. The Applicant has ensured that there will be safe circulation for pedestrians on South Frederick Avenue and the Property.

Noise Impacts on the adjacent residential community

An acoustical engineer report from Phoenix Noise & Vibration has been included with the application and provides an environmental noise analysis for the project (Exhibit #105g). As stated in the report, it finds that the operations of the gas station and retail building will be in compliance with the local ordinances regarding noise impact. The regulation of noise in the City is outline in § 15-8 of the City Code. Section 15-8 of the City Code states the following:

It shall be unlawful for any person or business entity to operate or permit the operation of noise producing instruments, devices, or equipment in such a manner or at such times that the peace and quiet of the residents of the city is disturbed. The following actions or conduct shall constitute public nuisances which disturb the peace, and are prohibited:

- (a) Except in the case of emergency repairs and other unique circumstances specifically approved by the city manager. The operation of lawnmowers, power tools, bulldozers, construction or building equipment, or other power driven labor-saving devices between the hours of 9:00 p.m. and 7:00 a.m. on weekdays, or between the hours of 9:00 p.m. and 9:00 a.m. on weekends and federal holidays, which are audible beyond the nearest common property line.*

- (b) The playing or operation of radios, stereos, television sets or similar devices between the hours of 10:00 p.m. and 8:00 a.m. which are audible beyond the confines of the dwelling unit within which such sound is played or relayed; or if such devices are placed or operated in an outdoor area, which are audible beyond the nearest common property line at the hours specified herein.*

- (c) Noise discharged from any motor vehicle or motorcycle, or the operation of the same in such a manner as to disturb the peace and quiet of residents of the city. This prohibition shall include engine, exhaust, or tire noise, music and improper use of the horn.*

During the site visit, the engineer noted that the noise sources present at the time was primarily traffic from Frederick Avenue. The study also noted that there was a significant amount of insect noise toward the rear of the property. A model was used to determine future noise impact of the proposed project. As stated in the report, it finds that the operations of the gas station and retail building will be in compliance with the local ordinances regarding noise impacts and will not negatively affect the health and well-being of the surrounding residential and commercial properties. To further mitigate the sound from the project, there will be no public entrance in the rear of the building and the project will not include outdoor seating,

automobile services or a car wash facility. Lastly, the Wawa fuel delivery trucks are required to shut off engines during deliveries.

Adaptive Reuse of the Existing Building

During the hearing, a question about adaptive reuse of the existing building on the site was raised. According to the Applicant, the reuse of the existing building was not feasible for this project because of the age of the building and the subsequent building additions, which resulted in different floor heights (Exhibit #105i). The current building also does not comply with the Americans with Disabilities Act (ADA) accessibility requirements. Additionally the building contains hazardous materials such as asbestos flooring, lead based paint and mercury light bulbs. The overall building does not meet the needs for the Wawa operation.

Removal of Ingress/Egress Entrance along South Frederick Avenue

The Applicant was asked to explore the possibility of removing the proposed ingress/egress entrance along South Frederick Avenue. As stated in the Applicant's response letter, the proposed entrance along South Frederick Avenue is needed to accommodate the movement of fuel trucks (Exhibit #105a). The recorded easement agreement between the property owner and the Holbrook Shopping Center restricts fueling trucks to make a left turn only at the signalized intersection at South Frederick Avenue and Education Boulevard, therefore this new entrance on the property is needed.

Compliance with the Master Plan

The subject Property was addressed in the 2001 Frederick Avenue Corridor Land Use Plan (Plan). The Property is located within the Southern Residential District, and is one parcel of a larger Map Designation F. The Plan recommended that Map Designation F be designated commercial-office-residential and zoned CD. Map Designation F includes multi-family, light commercial or offices uses as allowable potential uses. Staff notes that the recommendation for Map Designation F does not require each individual parcel within the designation to have all three types of land uses in any redevelopment; only that any plan reflect at least one of the recommended uses.

As stated in the Applicant's response letter, the proposed project is in conformance with the Master Plan, because the main use on the Property will be a single-story retail building and the gas station is the accessory use to said retail use (Exhibit #105a). According to Wawa, the retail sales are expected to outpace the fuel sales and thus the majority of the commercial activity will take place in the retail store. The Wawa's retail operation can be categorized as the sale of food, beverages and other convenience items, which would be considered a light commercial use.

Staff concurs with the Applicant's response and adds the following. The proposed Wawa will be a single-story, single use, commercial building and is not out of character with other uses located within the larger Map Designation F. The City's Zoning Ordinance does not specifically define "commercial" or "light commercial". The American Planning Association (APA) defines "commercial" as *"a land use or other activity involving the sale of goods or services for financial gain. Any activity conducted with the intent of realizing a profit from the sale of goods or services to others."* As such, the proposed Wawa, and any retail use, would be considered a commercial use.

In relation to the existing structure, Staff notes, the proposed project contains a 5,060 square foot commercial building, which is smaller than the existing 8,920 square foot retail building. The proposed

commercial building is below the height requirements for the Southern Residential District, and is one-story in height, similar to the existing building. The project also maintains the existing landscape buffer along the rear of the property, which is similar to the neighboring Holbrook shopping center. While the proposed building is setback further from South Frederick Avenue, which is necessary to incorporate the fuel pumps, similar to the existing retail structure, the proposed building is oriented towards South Frederick Avenue.

Montgomery County Regulations on Gas Stations

There were comments from the public about Montgomery County's regulations on gas stations. In Montgomery County, a new gas station that dispense more than 3.6 million gallons of fuel per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; and outdoor civic, institutional or recreation use; or any wetland, stream, river, flood plain, or environmentally sensitive area. The City of Gaithersburg Code does not have the same restrictions for gas stations as Montgomery County.

Need for another gas station on Frederick Avenue

There were questions raised about whether there was a need of another gas station on Frederick Avenue and the impact it will have on existing businesses. The Applicant noted in their response letter that the City's Zoning Ordinance does not include a statutory mandated need analysis for automobile filling stations in the CD Zone. The approval of a schematic development plan is based on the findings on Section 24-160G.7(b) of the City's Zoning Ordinance. The Applicant notes the Maryland appellate courts have consistently held that it not the function of zoning to eliminate or restrict economic competition. The Court of Appeals has held that preventing economic competition between existing businesses and a new business within the same vicinity through a zoning decision is not a valid use of zoning law. The Applicant also notes that the proposed Wawa provides services that other existing automobile filling stations in the vicinity do not, such as on-site preparation of food. The existing automobile filling stations along Frederick Avenue provide other services such as a car wash and automobile repair facilities, which Wawa does not provide.

Permitted Use in the CD Zone

In the CD zone, all uses listed as permitted and not solely as special exceptions or conditional uses in all zoning districts unless otherwise prohibited. Automobile filling stations are permitted in the C-1 (Local Commercial) and C-2 (General Commercial), and C-3 (Highway Commercial). While there are specific dimension restrictions in the C-1 and C-2 zone, there are no dimension restrictions for automobile filling stations. Staff notes that the dimension restrictions in the C-1 and C-2 zones does not carry over in the CD Zone, which has its own specific development requirements.